

Superior Court of Justice

(Name of Court)

at 425 Grand Avenue West, Chatham, Ontario N7M 5K8

(Court office address)

**Form 38: Notice
of Appeal**

Applicant(s)

Check the appropriate box:

☐

Appellant

☒

Respondent

in this appeal

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

Chatham-Kent Children's Services

495 Grand Avenue West

Chatham, Ontario

N7M 5K8

Tel: (519) 352-0440

Fax: (519) 351-2367

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

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Tel: (519) 352-0440 ext 4140

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Respondent(s)

Check the appropriate box:

☒

Appellants

☐

Respondent

in this appeal

Full legal name & address for service — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

J.S.

Lawyer's name & address — street & number, municipality, postal code, telephone & fax numbers and e-mail address (if any).

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Our names are: (name of party making this appeal)

J.S. and S.T.

WE APPEAL TO THE (name of court) **Superior Court of Justice**

at (municipality)

Municipality of Chatham-Kent

from the following order or decision:

Date of order:

February 3, 2014

Name of court that made it:

Ontario Court of Justice

Name of judge who made it:

Honourable Mr Justice Stephen J. Fuerth

Place where it was made:

Municipality of Chatham-Kent

It was:

☒

a final order.

☐

A temporary order.

We ask that this order to be set aside and that an order be made as follows: (Set out briefly the order that you want the appeal court to make.)

1. An Order granting leave to the Appellants to file fresh evidence as such evidence pertains to the best interests of the children subject to this appeal.

5. It is respectfully submitted that the learned application Judge erred in deciding that the *Child and Family Services Act* was not a complete code in contemplating inter-jurisdictional matters including the circumstances involved in the instant appeal.
6. It is further and respectfully submitted that the learned application Judge erred in law in his application of s. 19 of the *Children's Law Reform Act*. Specifically, the learned application judge failed to consider the exceptional circumstances flowing from the unique cultural, religious and community circumstances of the families and children before the court.
7. It is further and respectfully submitted that the learned application judge erred in law in failing to make a superseding Order pursuant to s. 42(1)(b) of the *CLRA*. The learned application judge erred in failing to determine the issues of serious harm and best interests on the present circumstances of the children. him.
8. The learned application judge erred in law by weighing the principles of the administration of justice over the best interests of the children. Moreover, the learned application judge erred in misinterpreting s. 146 of the *Courts of Justice Act* such that he failed to recognize that principles of administration of justice become paramount only in the absence of express law which directs the court otherwise. In that respect, it is respectfully submitted that the paramount purposes of the *Child and Family Services Act* must prevail over the need to punish the parents.
9. It is further and respectfully submitted, that the learned application judge erred in law in failing to determine that the Appellant Respondents' conduct in having left the Québec jurisdiction was conduct undertaken on the basis of sincere religious belief rather than a bald affront to the administration of justice. Without having provided the substantive and procedural protections available under the *Child and Family Services Act*, as that Act specifically considers and accommodates religion, culture and the community context of the children and the family, there was a non-trivial infringement of the Appellant's s. 2(1) rights under the *Canadian Charter of Rights and Freedoms* and it cannot be justified under s. 1.
10. It is respectfully submitted that the learned application judge erred in law in determining the Appellant's and the subject children's s. 7 *Canadian Charter of Rights and Freedoms* rights had not been violated. Having ousted the full protections, both procedural and substantive, of the *Child and Family Services Act*, the decision of the learned application Judge was not made in accordance with the principles of fundamental justice and cannot be justified pursuant to s. 1 of the *Charter*.

Put a line through any blank space left on this form.

NOTE TO THE APPELLANT: You have 30 days to serve this notice on the other parties in the case and you must file it with the clerk of the appeal court with proof of service (Form 6B) within 10 days after that.

NOTE TO THE RESPONDENT: If you want to oppose this appeal, you or your lawyer must prepare a respondent's factum required by subrule 38(9) of the *Family Law Rules*, serve a copy on the appellant(s) and file a copy with the clerk of the appeal court with proof of service (Form 6B). You must serve and file a respondent's factum at least 3 days before the hearing of the appeal. If you do not, the appeal will go ahead without you and the court may make a new order and enforce it against you.

Signature

Date of signature

2. An Order dismissing the application of the Applicant (Respondent to the appeal).
3. In the alternative, an Order pursuant to s. 42(1)(b) of the *Children's Law Reform Act* superseding the Order of the Honourable Justice P. Hamel, of the Court of Québec dated November 27, 2013, with an Order that the application of the Applicant Society shall be dismissed.
4. In the further alternative, an Order pursuant to s. 42(1)(b) of the *Children's Law Reform Act* superseding the Order of the Honourable Justice P. Hamel of the Court Québec dated November 27, 2013, with an Order that the children of J.S. and S.T., being Y.N.S., born December 14, 1997, M.S., born January 4, 1999, Y.S., born January 21, 2000, M.S., born July 29, 2001, Y.S., born January 1, 2004, R.S., born June 16, 2005, C.E.S., born February 2, 2009, and M.S., born April 14, 2003, (the "children") shall be placed in the temporary care and custody of their respective parents subject to the supervision of the Applicant Society on such reasonable terms of supervision deemed appropriate by this Honourable Court pursuant to s. 51(2) of the *Child and Family Services Act*.
5. In the further alternative, an Order that this Honourable Court, based on its inherent *parens patriae* jurisdiction, that the children of J.S. and S.T. shall be placed in the temporary care and custody of their respective parents subject to the supervision of the Applicant Society on such reasonable terms of supervision deemed appropriate by this Honourable Court pursuant to s. 51(2) of the *Child and Family Services Act*.
6. In the further alternative, an Order that this Honourable Court, pursuant to either s. 42(1)(b) or this Honourable Court's *parens patriae* jurisdiction, placing the children in the temporary care and custody of a person who is a relative of the children or a member of the children's extended family or community, pursuant to s. 51(3.1) of the *Child and Family Services Act*.
7. Costs of this appeal.

The legal grounds for my appeal are: (Set out in numbered paragraphs the legal basis of your appeal.)

1. It is respectfully submitted that the learned application Judge erred in law in determining that he was seized of the matter to be decided under the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, rather than the *Child and Family Services Act*, R.S.O. 1990, c. C.11. In so doing, the learned applications Judge failed to take into account the foremost considerations of the paramount and other purposes of the *Child and Family Services Act*.
2. It is further and respectfully submitted that the learned application judge erred in failing to recognize that the application of the *Child and Family Services Act* takes precedence over the *Children's Law Reform Act* where there is a conflict between the statutory regimes.
3. With respect, it is submitted that the learned application Judge erred in law in having narrowed the Applicant Society's statutory mandate and obligations to acting as the Agent of Quebec's Director of Child Protection in enforcing the Order to return the subject children to Quebec. On the same basis, the learned application judge erred in granting the Applicant Society standing for the purpose of its *Children's Law Reform Act* application.
4. It is respectfully submitted that the learned application Judge erred in law by failing to consider and or ensure that there was evidence of the present circumstances relevant to a consideration of the best interests of the children at the time the matter was before him.